

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

Original
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

COMMUNITY TELEVISION OF
SOUTHERN CALIFORNIA

VALLEY PUBLIC
TELEVISION, INC.

For Construction Permit for a
New TV Station on Channel *39
in Bakersfield, California

MM Docket No. 93-93

File No. BPET-881012KE

File No. BPET-900904KE

To: The Honorable Arthur I. Steinberg
Administrative Law Judge

JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT

1. Community Television of Southern California ("Community") and Valley Public Television, Inc. ("Valley"), by their attorneys and pursuant to Section 73.3525 of the Commission's Rules, hereby request that the Settlement Agreement ("Agreement") attached hereto as Exhibit 1 be approved and that, upon approval, their above-referenced applications for a new noncommercial educational television station to operate on Channel *39, Bakersfield, California, be dismissed without prejudice.

2. The Agreement provides for, among other things, (1) the dismissal of both the Community and Valley applications without prejudice, (2) the dismissal by Valley of its Petition for Reconsideration of the grant of Community's application (File No. BPTT-910503AY) for a new television translator station on Channel 67 in Bakersfield, California, (3) the provision of noncommercial

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television service to Bakersfield by both parties on their respective translator facilities, and (4) various agreements between Community and Valley, effective for a period of five (5) years, defining the areas in which each party may operate translator or low power television facilities and limiting the retransmission of their respective signals. The Agreement also prohibits Valley and Community from applying for a full service station to operate on Channel *39 in Bakersfield for five (5) years unless an independent third party files for such facility first. The effectiveness of the Agreement is conditioned upon the Commission's action approving the Agreement in its entirety, dismissing the Community and Valley applications without prejudice and such action becoming "final" as defined in the Agreement.

3. The foundation of the settlement reached by Valley and Community is the preservation of a level playing field in the Bakersfield area. To this end, it is a condition of the settlement that the applications of Valley and Community be dismissed without prejudice. The sole purpose of this condition is to permit the parties to file for Channel *39 in Bakersfield during the 12-month period following dismissal of their applications if and only if a third party applies for such facility. The presence of a full service noncommercial television facility would upset the competitive balance in Bakersfield. It is essential to the parties that each have the ability to compete for such a facility if it is put into play. The parties are

otherwise bound by the Settlement Agreement not to file for Channel *39 in Bakersfield for a period of five years.

4. Pursuant to Section 73.3519 of the Commission's Rules, applications dismissed after designation are usually dismissed with prejudice, thereby precluding the refiling of the same or similar applications for a 12-month period. The Presiding Judge has the discretion under Section 73.3568(c) of the Rules, however, to dismiss applications without prejudice after designation upon a good cause showing. The parties believe good cause exists in this case.

5. Section 73.3568(c) permits dismissal without prejudice upon a showing that dismissal "is based upon circumstances wholly beyond the applicant's control which preclude further prosecution of his application." Here, Valley and Community seek dismissal without prejudice solely to permit them to respond to circumstances beyond their control -- the filing of an application for Channel *39 in Bakersfield by a third party.

6. The purpose of Section 73.3519, and therefore by inference of Section 73.3568(c), is "to aid the Commission in achieving sound administrative process by barring applicants from continuously relitigating matters already decided." El Rio Broadcasting, 39 RR 2d 1272, 1275 [1976]. No such potential for abuse is present here. No matters have already been either litigated or decided. Indeed, the parties have agreed between themselves not to file applications for Channel *39 for the next 60 months. If any such application is filed by someone else

within the next 12 months, however, the parties merely want to be able to protect their respective interests by filing competing applications.

7. The settlement reached between Valley and Community is clearly in the public interest. Significant savings in terms of time, resources and money will be realized by the Commission and the parties. The monies earmarked for the comparative hearing will be available to produce programming to serve the public directly. Moreover, the settlement ensures that each party will provide translator service to Bakersfield and that the sole Spanish language noncommercial television service in Bakersfield will not be displaced. Given the public interest benefits of this settlement, the parties urge the Presiding Judge to ensure its consummation by dismissing their respective applications without prejudice.^{1/}

8. Attached as Exhibits 2 and 3 hereto are the Declarations of each of the applicants attesting to the fact that they did not file their applications for the purpose of reaching or entering into a settlement agreement and attesting that no consideration

^{1/} The parties believe that the facts of this case justify dismissal without prejudice pursuant to Section 73.3568(c). Should the Presiding Judge disagree, the parties request the Presiding Judge to grant a waiver of Section 73.3568(c) because the underlying purpose of the rule would not be served by applying it in this case and a grant of the waiver would otherwise be in the public interest. See WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). In the alternative, the parties request a waiver of Section 73.3519 to permit them to file applications for Channel *39 in Bakersfield during the 12-month period following dismissal only in the event that an application for such facility is filed in the first instance by another party.

has been paid or received in connection with this settlement other than that set forth in the Agreement.

WHEREFORE, for the reasons set forth herein, the parties hereto respectfully request that the Settlement Agreement be approved, the applications of Valley and Community be dismissed without prejudice and this Joint Petition be granted.

Respectfully submitted,

COMMUNITY TELEVISION OF
SOUTHERN CALIFORNIA

By: Thomas Schattenfield
Thomas Schattenfield
Theodore D. Frank
Gerald P. McCartin
Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue, N.W.
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VALLEY PUBLIC TELEVISION, INC.

By: Vincent J. Curtis, Jr.
Richard Hildreth
Vincent J. Curtis, Jr.
Patricia Mahoney
Fletcher Heald & Hildreth
1300 North 17th Street
11th Floor
Rosslyn, Virginia 22209
(703) 812-0400

June 18, 1993

Exhibit 1

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into by and between Community Television of Southern California ("Community") and Valley Public Television, Inc. ("Valley"), referred to collectively as "the Parties."

W I T N E S S E T H

WHEREAS, Community is the licensee of noncommercial educational television station KCET, serving the community of Los Angeles, California, and Valley is the licensee of noncommercial educational television station KVPT, serving the community of Fresno, California;

WHEREAS, Community and Valley have applications pending before the Federal Communications Commission ("Commission"), with the respective file numbers of BPET-881012KE and BPET-900904KE, for a construction permit for a new noncommercial educational television station to operate on Channel *39 in Bakersfield, California;

WHEREAS, the applications of the Parties are mutually exclusive and, pursuant to the provisions of the Communications Act of 1934, as amended, have been designated for an evidentiary hearing in MM Docket No. 93-93;

WHEREAS, the hearing is now scheduled to begin on August 17, 1993;

WHEREAS, Univision Television, Inc. ("Univision") is the licensee of a television translator station currently operating on Channel *39 and that translator is the only station in Bakersfield which offers Spanish-language programming;

WHEREAS, Univision's translator would be displaced if either Community or Valley was awarded a construction permit for Channel *39;

WHEREAS, the Parties wish to avoid the burden and expense of a comparative hearing, thereby conserving their resources to provide noncommercial educational broadcast programming and other services to their current cities of license, as well as to conserve the resources of the Commission: and.

currently authorized on Channel 67 and Channel 65, respectively; and Valley will withdraw its Petition for Reconsideration of the grant of Community's application for construction permit for a translator on Channel 67 at Bakersfield (File No. BPTT-910503AY).

4. During the pendency of the settlement process and until this Agreement is approved by Order of the Presiding Judge in MM Docket No. 93-93, both parties agree not to publicize the fact that they are discussing settlement or to publicize any settlement that may be reached. Any publicity concerning the settlement thereafter shall be handled by a joint press release(s), approved and issued by representatives of Valley and Community.

5. Except as specifically provided herein, Community will not authorize the retransmission of the signal of KCET via a television translator or low power TV station (both of which will be referred to herein as a "translator" or "translators") and will not file any application for a translator (a) in Kern County north of the latitude through the center of Bakersfield, or (b) in Kings, Tulare, Fresno, Madera, Merced, Mariposa, or San Benito Counties. This restriction does not apply to Community's Lake Isabella translator, KO6MC, which is grandfathered under this Agreement.

6. If the licensee of the translator in Ridgecrest, California, that is rebroadcasting the signal of Station KCET is no longer able or willing to continue the operation of that translator, Community may acquire it, or, if Community is unable

to acquire it, Community may apply for another translator to be located within 20 miles of Ridgecrest and Valley will not oppose such efforts.

7. Except as specifically provided herein, Valley will not authorize the retransmission of the signal of KVPT via a translator and will not file any application for a translator in Kern County, with the exception that, if Valley's KVPT ceases to be carried on the cable system serving the Lake Isabella area (Wafford Heights headend), or if Valley has reason to believe that KVPT's signal will be dropped from that system, Valley may apply for a translator at Lake Isabella, and Community will not oppose such application, unless Valley's proposed translator would cause technical interference to either of Community's existing or authorized Lake Isabella or Bakersfield translators.

8. Valley will not oppose an application by Community to relocate its Bakersfield Channel 67 translator to a transmitter site on Mt. Adelaide or at another site in Kern County or to change channels (other than to Channel *39), so long as the Grade B equivalent contour of the proposed translator does not cross the northern boundary of Kern County; provided, however, that Valley may oppose any such relocation or channel change if it would cause technical interference to Valley's existing or authorized translator.

9. If Community is displaced from either of its authorized translator channels in Bakersfield or Lake Isabella or its proposed channel at Ridgecrest (as provided for in paragraph 6,

supra), or Valley is displaced from its authorized translator channel in Bakersfield or its proposed channel in Lake Isabella (as provided for in paragraph 7, supra) as a result of Commission action or is required to terminate operations on any of those translator channels pursuant to Commission rules or policies, the other party will not oppose any application for a translator to operate on a substitute channel which is reasonably comparable to the channel from which Community or Valley was displaced. If, with respect to Community's or Valley's Bakersfield translator, a reasonably comparable channel cannot be found or purchased at a reasonable price, the displaced party may file an application for a full power television station on Channel *39, notwithstanding the provisions of paragraph 11, infra, and the other party may file a competing application.

10. Neither party will support, encourage or assist, directly or indirectly, any applicant for Channel *39 during the term of this Agreement, nor will it allow an applicant for Channel *39 or any other translator channel serving the Bakersfield metropolitan area to retransmit or rebroadcast its signal, except that this prohibition shall not apply to (a) any program broadcast pursuant to a program sale or license agreement (i.e., an agreement by which a party hereto has sold or conveyed the right to rebroadcast a specific program or program series to a totally independent third party) or (b) a block of programming intended for instructional use by educational institutions.

11. Community and Valley agree not to file during the term of this Agreement another application for a full service television station to operate on Channel *39 at Bakersfield unless a third party should first file for the Channel, in which event either Community or Valley or both may file a competing application for the Channel *39 facility.

12. This Agreement will remain in effect for a period of five (5) years from the date that the Order approving this Agreement has become a Final Order, as that term is defined in paragraph 16, infra, unless renewed or extended by the Parties hereto.

13. If there is no Order by the Commission approving this Agreement in its entirety by September 30, 1993, either Party may at any time thereafter, upon ten (10) days' written notice to the

more annually) as of the date this Agreement is executed. If a question arises as to Community's compliance with this provision, Arent Fox will make such list available to Fletcher Heald & Hildreth (FH&H) for the purpose of ascertaining compliance, provided that FH&H will not disclose the contents of the list to Valley.

15. Any negotiations with Univision will, for the mutual benefit of both parties, be conducted by Community, and Valley may, at its option, join in such negotiations.

16. As used in this Agreement, the following terms have the following meanings:

(a) "Order" means a written authorization, determination, denial, ruling or other action by the Commission or its staff under delegated authority, including the Administrative Law Judge designated to preside over the hearing proceeding with respect to the applications referenced herein.

(b) "Final Order" means an Order with respect to which the time for any and all requests for reconsideration, review or appeal, and for reconsideration or review by the Commission on its own motion, has expired with no such request, reconsideration, review or appeal having been timely requested or instituted.

17. The Parties will file this Agreement with the Commission no later than June 18, 1993, with a joint request for its approval, in accordance with the provisions of Section 73.3525 of the Commission's rules and regulations. Each

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If to Valley Public Television, Inc.:

Mr. Colin Dougherty
General Manager
Station KVPT(TV)
Valley Public Television, Inc.
1544 Van Ness Avenue
Fresno. California 93721

In witness whereof, the Parties have caused this Agreement
to be executed as of the dates below.

COMMUNITY TELEVISION OF SOUTHERN
CALIFORNIA

Date: 6/17/93

By: *Glenn C. Schroeder*

Its: SENIOR VICE PRESIDENT AND GENERAL COUNSEL

VALLEY PUBLIC TELEVISION, INC.

Date: _____

By: _____

Its: _____

In witness whereof, the Parties have caused this Agreement
to be executed as of the dates below.

COMMUNITY TELEVISION OF SOUTHERN
CALIFORNIA

Date: _____

By: _____

Its: _____

VALLEY PUBLIC TELEVISION, INC.

Date: 6/16/03

By: *Max Levinson*

Exhibit 2

DECLARATION

I, Mary Louise Vivier, hereby declare as follows:

1. That I am the current Chair of the Board of Directors of Valley Public Television, Inc., the applicant for a construction permit for a noncommercial television station to operate on Channel *39, Bakersfield, California (File No. BPET-900904KE).

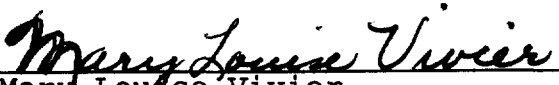
2. That Valley's application is currently in a mutually exclusive hearing (MM Docket No. 93-93) with the application of Community Television of Southern California (File No. BPET-881012KE) for the same facilities at Bakersfield.

3. That except for the Settlement Agreement by and between Community and Valley seeking to settle the mutually exclusive hearing, there are no other agreements or understandings by and between those parties, their officers, directors or agents, promising, either directly or indirectly, any form of consideration.

4. That the application of Valley was not filed for the purpose of delay nor to gain consideration as the result of any possible settlement.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on this 16th day of June, 1993.



Mary Louise Vivier

Exhibit 3

DECLARATION OF NO CONSIDERATION

Glenn C. Schroeder, hereby declares under penalty of perjury:

1. I am Senior Vice President and General Counsel of Community Television of Southern California ("Community"), an applicant for a new noncommercial television station to operate on Channel *39, Bakersfield, California (File No. BPET-881012KE).

2. Community has entered into a Settlement Agreement (the "Settlement Agreement") with Valley Public Television, Inc. ("Valley"), the only other applicant for Channel *39 in Bakersfield, California (File No. BPET-900904KE), pursuant to which both Community and Valley have agreed, inter alia, to dismiss their pending applications for Channel *39.

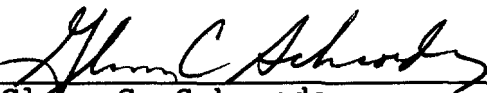
3. Community's application was not filed for the purpose of reaching or carrying out a settlement with any other mutually exclusive application for the Bakersfield, California, television station.

4. Neither I nor anyone else representing Community has paid or promised to pay, orally or in writing, money or any other thing of value in connection with the proposed dismissal of Valley's application, other than the consideration set out in the Settlement Agreement.

5. Approval of the Settlement Agreement will serve the public interest by saving substantial time and the resources of the parties and the Federal Communications Commission and will permit the licensee of the television translator station currently operating on Channel *39, the only station in Bakersfield

which offers Spanish-language programming, to continue to operate on Channel *39.

COMMUNITY TELEVISION OF
SOUTHERN CALIFORNIA

By: 
Glenn C. Schroeder
Senior Vice President and
General Counsel

Date: June 17, 1993

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Joint Petition For Approval of Settlement Agreement served on the 18th day of June, 1993, by United States mail, postage prepaid (unless otherwise indicated), to the following:

Honorable Arthur I. Steinberg
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 228
Washington, D.C. 20554
(By Hand)

Norman Goldstein, Esq.
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W., Suite 7212
Washington, D.C. 20554
(By Hand)

Vincent J. Curtis, Jr.
Fletcher Heald & Hildreth
1300 North 17th Street
11th Floor
Rosslyn, Virginia 22209



Christy R. Tavitas